

1982 WL 189285 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 7, 1982

*1 Honorable Alex Sanders
Post Office Box 11252
Columbia, South Carolina 29211

Dear Senator Sanders:

Your letter of April 22, 1982, addressed to Attorney General McLeod and requesting an opinion concerning outside employment for state employees has been referred to me for response. You have asked whether an employee of a state agency may be hired by a private company that has been retained by the employee's agency to accomplish a project for which the agency has received a federal grant. More specifically, your inquiry is whether such an arrangement would involve 'dual compensation' because of the passthrough of federal funds by the employing agency to the private company. It is the opinion of this office that, only under certain narrow circumstances could the employee lawfully be hired by the private company to perform work on the federally-funded project while simultaneously retaining his state job.

As long as he remains on the state payroll, a state employee may not lawfully be compensated by a private contractor for work he performs during his normally scheduled working hours (i.e. the time for which he is paid by his state employer, excepting accrued annual leave). See Section 133 of Part I of the 1981-82 Appropriations Act (62 Stat. 1603-1604) which provides, in pertinent part:

[S]alaries paid to officers and employees of the State . . . shall be in full for all services rendered. . .

[S]alary appropriations for employees fixed in this Act shall be in full for all services rendered, and no supplements from other sources shall be permitted or approved by the State Budget and Control Board.

A state employer may, of course, assign an employee to work with a private contractor on a federally-funded project; however, the employee could lawfully receive only his state salary for work performed during working hours.

State employees may engage in outside employment during non-working hours provided the state employer approves of such and provided that this outside employment could not reasonably be construed as constituting a conflict of interest with the employee's state job. See Section 2.09 B. and C., State Personnel Manual. Therefore, the state employee to whom you refer in your April 22 letter could lawfully be hired by the private contractor to perform work on the federally-funded project outside his normal state working hours provided the employing state agency approves and provided such extra-hour employment could not reasonably be construed as a conflict of interest.

In conclusion, it is the opinion of this office that a state employee may be hired by a private contractor that has been retained by the employee's agency to accomplish a project for which the agency has received a federal grant only under the following conditions: (1) the employee is hired to work during hours outside those during which he is compensated by the State (accrued annual leave excepted); (2) the employee is not compensated by the private contractor for work performed during the time

for which he is compensated by the State (accrued annual leave excepted); (3) the state employer approves of such outside employment; and (4) such outside employment could not reasonably be construed as a conflict of interest. If these four conditions are satisfied, outside employment would not be prohibited simply because the contractor for whom the employee worked in his off-duty hours received payment for services performed from the state agency for whom the employee works during normal working hours.

*2 Please call us if you have further questions.

Sincerely,

Vance J. Bettis
Assistant Attorney General

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